

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3609 OF 1992

Balasaheb Shankarrao Salunkhe	.. Petitioner
Vs.	
Kisan Sadashiv Jadhav	.. Respondent.

Mr.A.A.Kumbhakoni for the petitioner.
None for the respondent.

CORAM : D.B.BHOSALE, J.

DATED : 18TH FEBRUARY, 2005

P.C.:

. Heard Mr.Kumbhakoni, learned counsel for the petitioner. None for the respondent though served.

2. By this petition, the petitioner has challenged the order dated 20.7.1992 passed in Civil Miscellaneous Appeal No.105 of 1992 by Additional District Judge, Solapur. The operative part of the order reads thus:

"(a) The appeal preferred by defendant no.1 is partly allowed with costs. The ad-interim mandatory injunction granted by the learned Civil Judge, directing the defendants to erect the shed on the Padvi i.e. the order granting injunction in Part

II of the order is set aside and plaintiff's claim to the extent of that relief is rejected.

(b) The order of learned Civil Judge granting mandatory injunction, directing defendants to demolish the wall, the relief granted in Part I of the order, as well as the order granting temporary injunction prohibiting the defendants from causing obstruction in the passage, the order at Part III shall stand confirmed".

. The miscellaneous appeal was directed against the judgment and order dated 4th July, 1992 passed by the trial Court below Exhibit 5, 16 and 19 in Regular Civil Suit No.492 of 1992. The operative part of the order passed by the trial Court reads thus:

. Applications for ad-interim injunctions at Exhibits 5, 16 and 19 are allowed as under:

I. Defendants are hereby directed to demolish the wall which is standing east-west in the passage in front of the plaintiff's house bearing No.77, corresponding CTS No.918-C and more

particularly defendants are directed to demolish wall and to make entire passage free from plaintiff's house to the public road at northern side free from obstruction, which is shown by the red ink in the map below commissioner's report Exh.18 forthwith.

II. The defendants are hereby directed to put forth tin sheets on the Padavi in front of the plaintiff's house bearing No.77, corresponding CTS No.918.

III. The Defendants are hereby restrained from causing any construction or causing any obstruction in the user of the passage which is in front of the plaintiff's house bearing No.77, corresponding CTS No.918-C which runs from his house east-west and then turn to north direction to the public road till the disposal of the suit.

IV. The order of status-quo passed below Exh.16 on 30.6.1992 is hereby stands vacated.

V. Parties to bear their own costs.

3. This Court by the order dated 20.8.1992 had issued Rule and granted interim relief in terms of

prayer clause (c). The amended prayer clause (c) reads thus:

(c) Pending the hearing and final disposal of this Writ Petition, the execution and operation of the impugned Judgment and order dated 20/7/1992 passed by the learned Additional District Judge at Solapur in Civil Misc. Appeal No.105/1992 to the extent of granting injunction directing the Petitioner to demolish the compound wall, arising out of the judgment and order dated 4/7/1992 passed by the learned II Joint Civil Judge, Junior Division, Solapur in Regular Civil Suit No.492/1992 below Exhibits 5, 16 and 19, be kindly stayed; on condition that the Defendant No.1 shall allow the Plaintiff to pass through the passage in his property, which is described by yellow colour in the map at Exhibit C".

4. The aforementioned interim relief operates till today. Mr.Kumbhakoni, learned counsel for the petitioner submits that there is no response from his client to his letters and, therefore, he is not

in a position to state as to whether or not Regular Civil Suit No.492 of 1992 is still pending. Keeping that in view and considering that the interim relief is running in favour of the petitioner since August 1992, in my opinion, appropriate course would be to direct the trial Court to dispose of the suit within time frame, if not disposed of already, and keep the interim relief granted by this Court in operation till the disposal of the suit. Hence the following order:

(a) If the suit is still pending, the trial Court shall endeavour to dispose of Regular Civil Suit No.492 of 1992 as expeditiously as possible and preferably within a period of six months from the date of receipt of this order. The trial Court shall decide the suit on merits in accordance with law and uninfluenced by the orders passed while dealing with the applications Exhibit 5, 16 and 19.

(b) Pending hearing and final disposal of the suit, the interim relief that was granted by the order dated 20.8.1992 in terms of prayer clause (c) shall remain operative.

(c) Rule is disposed of in the aforesaid terms.

. The writ petition is, accordingly, disposed
of.

(D.B.Bhosale, J.)